IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 321 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVSAR HASMUKHBHAI KALIDAS

Versus

STATE OF GUJARAT

Appearance:

MR MEHUL SHARAD SHAH for Petitioner

MR BY MANKAD,APP for Respondent

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 27/08/2001

ORAL JUDGEMENT

1. Rule. Service of rule is waived by learned Advocate APP Mr. B.Y. Mankad.

2. Heard learned Advocate Mr.Mehul S. Shah for the petitioner and learned APP Mr.B.Y.Mankad for respondent.

As per brief facts, vide Crime Register No. I/CR/256/2000 an offence was registered against one Parshottambhai Keshavlal Prajapati u/S. 409 of the Penal Code at Mehsana. In the above said investigation, the Police seized Fixed Deposits Receipts of the ownership of the present petitioner vide panchnama and hence the present petitioner filed an Application u/S. 451 of the Cr.P.C. to have custody of those Fixed Deposits Receipts which were held by him. The details of which have been mentioned in the application preferred before the learned Chief Judicial Magistrate at Mehsana which is at page 8 of this Revision Application.

3. Learned Chief Judicial Magistrate called for the report from the I.O., heard present petitioner and APP and came to the conclusion that the present petitioner was not the accused in the Crime and had produced enough evidence i.e. certified copy of the accounts of Sardar Cooperative Credit Society to show that the amount from which the said Fixed Deposits Receipts covered by the application of the petitioner were purchased from his own fund and not from the amount alleged to have been misappropriated by the accused of the crime. The learned Chief Judicial Magistrate, Mehsana, after relying on the decision of the High Court in the matter of DHARMENDRASINH DOLUBA ZALA vs. STATE BANK OF SAURASHTRA, reported in 1997 (2) GLR 919 came to the conclusion that in the facts and circumstances of the case, that was a transaction between the Bank and the petitioner, which cannot be stayed or prevented by the Investigating Agency and, therefore, the Chief Judicial Magistrate vide his Order dated 25.09.2000 ordered that the Fixed Deposits Receipts covered by the application of the present petitioner preferred before the Chief Judicial Magistrate be returned to the petitioner on furnishing the bond for the greater amount covered by the Fixed Deposits Receipts. However, the State filed a Revision Application before the Sessions Judge of Mehsana being Criminal Revision Application No. 138 of 2000 and vide his order dated 30.5.2001 the learned Addl. Sessions Judge was pleased to modify the order of the Chief Judicial Magistrate, Mehsana, which was dated 25.9.2000 to the extent that the Fixed Deposits Receipts be returned to the petitioner only for the renewal and after renewal the petitioner should furnish the renewed Fixed Deposits Receipts before the Trial Court as a muddamal. The Manager of Sardar Mahila Cooperative Credit Society was directed not to release the amount of the Fixed Deposits Receipts without the permission of the Court. This order of the learned Addl. Sessions Judge, Mehsana, which is dated 30.5.2001 is impugned in the present

Revision.

4. From the rival contentions and from the record, it appears that the Fixed Deposits Receipts covered by this Revision for which an Application was preferred before the Chief Judicial Magistrate, Mehsana, by the petitioner appears not to have been purchased from the amount alleged to have been misappropriated by accused of the crime. The learned Chief Judicial Magistrate has noted that the petitioner has submitted proper accounts of Sardar Cooperative Credit Society to show that how the petitioner was in possession of the amount to purchase the Fixed Deposits Receipts which are the subject matter of this Revision Application. Therefore, at this juncture, it cannot be said that the amount from which these Fixed Deposits Receipts are purchased by the petitioner is the amount of the mudammal for which it is alleged that the accused has committed misappropriation. Secondly, once at this prima facie juncture, it appears that the amount of purchasing of Fixed Deposits Receipts is not the amount for which the misappropriation is committed by the accused, then, the order in a proceeding u/S. 451 staying the transaction between the customer and a bank in respect to the Fixed Deposits Receipts would be improper.

5. In this view of the matter, the order impugned of the learned Addl. Sessions Judge suffers from the above discussed illegality and irregularity and is required to be revised. Therefore, this Revision Application is allowed. The order impugned of the learned Addl. Sessions Judge, Mehsana, which is dated 30.5.2001 is set aside and the order of learned Chief Judicial Magistrate, Mehsana, below Application for obtaining of mudammal filed by the petitioner and which is of dated 25.09.2000 is restored. Rule made absolute. D.S. Permitted.

(J.R. Vora, J.)

p.n.nair